COURT OF CRIMINAL APPEALS NO

APPEAL TO ALABAMA COURT OF CRIMINAL APPEALS

FROM

CIRCUIT	COURT OF	LEE	COUNTY,	ALABAMA
	CIRCUIT COURT N	O. <u>CC 2003 32</u>	23.60 & CC 200	325.60
	CIRCUIT JUDGE _	HON JACOB A WA	ALKER III	a. Causan
Type of Conviction / Or Sentence Imposed: PE	der Appealed From:	RULE 32 PETITON 9/2/04	IION	
Defendant Indigent:	XX YES NO			-
ROBERT WAYNE CLE	MENTS			AIS#145598
ROBERT WATRE OHD.				NAME OF APPELLANT
PRO-SE (Appellant's Attorney) 200 WALLACE DRIV	E	(Telephone No.)		
	017-2615 (State)	(Zip Code)		
(City)	(out.)	v.		
STATE OF ALABA	AMA			NAME OF APPELLEE
(State represented by Attorne; NOTE: If municipal appeal, name and address of municipal	indicate above, and enter			NAME OF ATTELLER
			₩Ÿ.	

(For Court of Criminal Appeals Use Only)

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CASE ACTION SUMMARY	002
IN FORMA PAUPERIS DECLARATION	
RULE 32 POST-CONVICTION PETITION	
PETITIONER'S BRIEF AND ARGUMENT IN SUPPORT OF PETITIONER'S RULE 32	
MOTION TO TRANSFER PETITIONER TO EVIDENTIARY HEARING	
MOTION FOR EVIDENTIARY HEARING	
MOTION TO APPOINT COUNSEL	
THE PURPLE PERPONSE AND MOTION FOR SUMMARY DISMISSAL OF	
DEFENDANT'S RULE 32 PETITION	065
ORDER	· 101
MOTION FOR ENLARGEMENT OF TIME	
MOTION FOR RECONSIDERATION	
NOTICE OF APPEAL TO THE ALABAMA COURT OF CRIMINAL APPEALS	
AND AND IN SUPPORT OF MOTION FOR LEAVE TO APPEAL IN	
FORMA PAUPERIS	
CLERK'S CERTIFICATE OF COMPLETION	- 195

ACRO349 Gase 3:05-cv-00723-MHT-TFM cDecument 9-2 N Filed 09/08/2005 Page 3 of 54 N T E R

CASE ACTION SUMMARY CONTINUATION

CASE: CC 2003 000323.60

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PRISON TRANSCRIPT ISSUED

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CASE ACTION SUMMARY CONTINUATION

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PRISON TRANSCRIPT ISSUED

VOL G64 PAGE 10 Facob A. Walker, III, Circuit Court Judge

THE CIRCUIT COURT OF LEE	Cas CRO372 FER: LEW AGE: 1	3:05-cv-00723-MHT-TFM Document 9-2 Filed 09/08/2005 Page 10 of 54 4 ALABAMA JUDICIAL INFORMATION SYSTEM CASE: CC 2003 000325 CASE ACTION SUMMARY CIRCUIT CRIMINAL RUN DATE: 04/15/2	- 44
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STATE OF ALABAMA GEPARTMENT OF CORRECTIONS CASTERLING CORR. PACILITY

ATO RE 145590 NAME: CLEMENTS, ROBERT WAYNE

AS 08: 0//06/2004

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IN THE CIRCUIT COURT FOR LEE COUNTY, ALABAMA

CASE NUMBER:

ASSIGNED BY CLERK

ROBERT WAYNE CLEMENTS, PETITIONER,

-vs-

STATE OF ALABAMA, RESPONDENT.

IN RE: CASE NUMBERS: CC-03-323 AND CC-03-325; LEE COUNTY CIRCUIT COURT

RULE # 32 POST-CONVICTION PETITION,

BRIEF AND ARGUMENT

PREPARED BY:

ROBERT WAYNE CLEMENTS, PETITIONER, PRO-SE.

FILED
JUL 1 3 2004

4

IN OFFICE CORINNE T. HURST CIRCUIT CLERK

### ADDRESS OF PETITIONER:

ROBERT WAYNE CLEMENTS, PRO-SE
ECF * #145598 * DORM - 9/A-22
200 - WALLACE DRIVE
CLIO, ALABAMA
36017-2615

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IN THE CIRCUIT COURT FOR LEE COUNTY, ALABAMA

CASE NUMBER:

ASSIGNED BY CLERK

### CERTIFICATE OF INTERESTED PARTIES

IN RE: ROBERT WAYNE CLEMENTS, PETITIONER,

-vs-

STATE OF ALABAMA, RESPONDENT.

IN RE: CASE NUMBERS: CC-03-323 & 325

***********

- 1). The Monorable Judge JACOB A. WALKER, III;
- 2). The Honorable NICK ABBETT DISTRICT ATTORNEY OF LEE COUNTY, ALABAMA, RESPONDENT;
- 3). ROBERT WAYNE CLEMENTS, PETITIONER, PRO-SE.

### 22

### IN THE CIRCUIT COURT FOR LEE COUNTY, ALABAMA

ROBERT WAYNE CLEMENTS, PETITIONER,

* CASE NUMBER:

-vs-

ASSIGNED BY CLERK

STATE OF ALABAMA, RESPONDENT.

*
* IN RE: CASE NO.'S: CC-03-323 &

* 326

# MOTION AND AFFIDAVIT IN SUPPORT OF MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Comes, the Petitioner and moves the Court for an "Order" granting leave to proceed in forma-pauperis and in support of said "Motion" makes the following Affidavit, will;

AFFIDAVIT

STATE OF ALABAMA ]
COUNTY OF BARBOUR

IN OFFICE CORINNE T. HURST CIRCUIT CLERK

JUL 13 2004

I, ROBERT WAYNE CLEMENTS, being first duly sworn, depose and sayeth that I am the Petitioner in the above entitled and numbered cases; that in support of my "A.R.Cr.P., Rule # 32 Post-Conviction Petition without being required to prepay fees, costs, or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceedings or to give security therefor; that I believe I entitled to redress.

I further state that the foregoing information that I provide to this Honorable Court relating to my ability to pay the cost of prosecuting my A.R.Cr.P., Rule # 32 Post-Conviction Petition are true and correct to the best of my knowledge and belief under penalty of perjury.

- 1). I am not presently employed, nor, have I been gainfully employed for several months prior to the filing of this instant Motion and Affidavit.
- 2). The date of my last employment was: 2002

# AFFIDAVIT OF PETITIONER CLAUNIS CONTINUED FROM PAGE # 1:

and	the	amo	unt	of	sa:	lary	that	<u> </u>	rece	ived	wa	s:	2,100	Mush
													t emp	
was	. Se	LF-	Emf	loye	<b>D</b>	CI EL-PRÍN, HINTÉGRANIS	rhara messioner ste	day age to a College		and the last of th	diren and	on the same of	ojana rojuliji inimijeroski izmeri izideka, er prilompej	

- 3). I do not own any cash, checking or savings account.
- 4). I do not own any real estate, stocks, bonds, notes, automobiles, or other valuable property, (excluding ordinary household furnishings and clothing).
- 5). When I was gainfully employed I helped support my family, but, at the present time, because of my poverty I cannot contribute any support to my family.

I understand that a false statement in this instant aff-davit will subject me to penalties of perjury.

Executed this the day of

Tean ( don't

ROBERT WAYNE CLEMENTS

### -NOTARY STATEMENT-

STATE OF ALABAMA ]

COUNTY OF BARBOUR ]

SWORN TO AND SUBSCRIBED BEFORE ME THIS THE_

OF

, 20 04

NOTARY PUBLIC

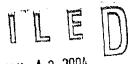
my commission expires March 19, 2007

MY COMMISSION EXPIRES

# PETITION FOR RELIEF FOM CONVICTION OR SENTENCE

(Pursuant to Rule 32,

Alabama Rules of Criminal Procedure)



JUL 1 3 2004

IN OFFICE CORINNE T. HURST CIRCUIT CLERK Case Number

					CC	03	323 & 325
					ID	YR	NUMBER
IN TH	CIRCUIT		COURT	OF.	LEE COUNTY,		ALABAMA
114 113	ROBERT WAYNE CLEMENTS		STATE	OF	ALABAMA		-
		VS.		F	Respondent		
Petitio	oner (Full Name)			r	Indicate eith	er the	"State" or.
	1			i	filed in mular name of the	nicipal	court, the
Priso	. #1 <b>45598</b> on Number	Place	e of Confine	ment	FASIERLING	CORR. 1	FACILITY
	nty of convictionLEE COUNTY						
	NOTICE: BEFORE COM THE ACCOM Name and location (city and county) of CITY OF Corsentence under attack	PANYING I	ns inversed the	ono. e iud	nment of co	nvictio	n 
	AUG	GUST 11,	2003				
2.	Date of judgment of conviction						
3.	Length of sentence [23] YEARS				•		•
	Nature of offense involved (all counts)	CONSPI	RACY TO	- CO	MMIT ROB	BERY,	AND,
4.	Nature of offense involved (dir source)	POSSES	SSION OF	A	SHORT-BA	RRELI	ED SHOTGUN
5.	What was your plea? (Check one) (a) Guilty (b) Not guilty		/		-		
	w of mental dis	ease or def	fect				
	(c) Not guilty by reason of memarais	n of menta	l disease or	defe	ct		

6.	Kind o	of tria	(Check one)
	(s) J	ury.	(b) Judge only XXX
7.	Did yo		stify at the trial?  No N/A
٤.	Did y	ou a	opeal from the judgment of conviction?
	Yes_	·	No XXX
9.	If you	ı did	appeal, answer the following:
	(a)	As to	the state court to which you first appealed, give the following information:
		(1)	Name of court N/A - NO APPEAL
			Result N/A
		(2)	Result
		(3)	Date of result N/A
		, ,	
	(b)	li y	ou appealed to any other court, then as to the second court to which you appealed, give following information:
			Name of court N/A
		(2)	Result N/A
		(0)	Date of result N/A
		(3)	Date of result
	(c)	lf y	ou appealed to any other court, then as to the third court to which you appealed, give the owing information:
		(1)	Name of court N/A - NONE
		٠	N / A
		(2)	Result N/A
		·:: (3)	Date of result N/A
		(O)	

Yes	No XXX
lí your	answer to Question 10 was "yes", then give the following information in regard to the firs
30011 p	etition, application, or motion you meet  N/A - NONE  Name of court
(2)	Nature of proceeding N/A
(2	Nature of proceeding
(3	3) Grounds raised
	(attach additional sheets if necessary)
	(attach additional sheets if necessary)
	(4) Did you receive an evidentiary hearing on your petition, application, or motion?
	Yes N/A No N/A
	(5) Result
	(6) Date of result N/A
	As to any second petition, application, or motion, give the same information:
(p)	As to any second perman, approach (1) Name of court
	(1) Name of court  (2) Nature of proceeding N/A
	(2) Nature of proceeding
	(3) Grounds raised N/A
	(attach additional sheets if necessary)
	(4) Did you receive an evidentiary hearing on your petition, application, or motion?
	Yes N/A No N/A
	N/A
	N/A
	(6) Date of result

Ca	se	3:05-cv-00723-MHT-TFN	Document 9-2	Filed 09/08/2005	Page 27 of 54
(	2)	Nature of proceeding N/I		· · · · · · · · · · · · · · · · · · ·	
(	3)	Grounds raised N/1	1		
		(attach additional sheets if r	necessary)		
	(4)	Did you receive an evidentia	ery hearing on your io	etition, application, or mo	tion?
	( . /	Yes	No N/A		
	(5)	N/A Result			
	•	Date of resultN/A			
	(6)	you appeal to any appellate	court the result of th	ne action taken on any pe	tition, apolication,
(d)		notion?			
	(1)	First petition, etc.	Yes N/A	No N	<u>/A</u>
	(2)	Second petition, etc.	Yes N/A	No_N	<u>/A</u>
	(2)	Third petition, etc.	Yes N/A	No N	<u>/A</u>
		ATTACH ADDITE FOR ANY SUBSEC	DNAL SHEETS GIVIN NUENT PETITIONS, A	IG THE SAME INFORMA APPLICATIONS, OR MOT	TION TONS.
(e)		you did not appeal when you u did not:	lost on any petition	, application, or motion,	explain briefly why
	1	WAS NOT ADVISED BY	THE COURT OR	MY TRIAL ATTORNE	Y THAT I
	Н	AD A RIGHT TO APPEA	L MY CONVICTION	ON AND SENTENCE.	HENCE: 1
	D	OID NOT APPEAL.			
					٠.
		every ground on which yo n the appropriate line(s) be ary, you may attach pages sta	low and providing to	le tednilen unnnmennn.	thether an implement

# GROUNDS OF PETITION

Listed below are the possible grounds for relief under Rule 32. Check the ground(s) that apply in your case, and follow the instruction under the ground(s):

A. The Constitution of the United States or of the State of Alabama requires a new trial, a new sentence proceeding, or other relief.

For your information, the following is a list of the most frequently raised claims of constitutional violation:.

If you checked this ground or relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

D. Petitioner is being held in custody after his sentence has expired.

If you checked this ground or relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

E. Newly discovered material facts exist which require that the conviction or sentence be vacated by the court, because:

The facts relied upon were not known by petitioner or petitioner's counsel at the time of trial or sentencing or in time to file a post-trial motion pursuant to rule 24, or in time to be included in any previous collateral proceeding, and could not have been discovered by any of those times through the exercise of reasonable diligence; and

The facts are not merely cumulative to other facts that were known; and

- XXX The facts do not merely amount to impeachment evidence; and
- XXX If the facts had been known at the time of trial or sentencing, the result would probably have been different; and
- XXX The facts establish that petitioner is innocent of the crime for which he was convicted or should not have received the sentence that he did.

If you checked this ground or relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

The petitioner failed to appeal within the prescribed time and that failure was without fault on petitioner's part.

If you checked this ground or relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

13. IMPORTANT NOTICE REGARDING ADDITIONAL PETITIONS RULE 32.2(b) LIMITS YOU TO ONLY ONE PETITION IN MOST CIRCUMSTANCES. IT PROVIDES:

"Successive Petitions. The court shall not grant relief on a second or successive petition on the same or similar grounds on behalf of the same petitioner. A second or successive petition on different grounds shall be denied unless the petitioner shows both that good cause exist why the new ground or grounds were not known or could not have been ascertained through reasonable diligence when the first petition was heard, and that failure to entertain the petition will result in a miscarriage of justice."

			•				
A.	Oth have	er than an appea e you filed in stat	I to the Alabama C e court any petition	Court of Criminal attacking this	I Appeals or conviction or	the Alabama Sup sentence?	reme Court,
	Yes	·	No NO	) 			
В.	-	ou checked "Yes," entence:	" give the following	information as	to earlier pe	tition attacking th	is conviction
	·(2)	Name of court	N/A - NONE				·
•	(b)	Result	N/A				4 2
		Date of result _		ary)			· · ·
C.	gro	unds of relief fro	"Yes" line in 13A, m an earlier petitic TON FOR NEW GF	on or petitions y	ou filed, atta	óntains a differer Ioh a separata shi	nt ground or set or sheets
	Wer	e nat known or a	sheet(s) explain w could not have bee and (why the) faile	n ascertained th	nrough reasc	nable diligence v	inen me ilist

Yes _____ No <u>XX</u>

of justice."

under.attack?

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment

### Case 3:05-cv-00723-MHT-TFM Document 9-2 Filed 09/08/2005 Page 30 of 54

		hooring	MS. L	AURIN	AREND	LAUDER					
(2)	At preliminary	nearing -	2304	- A G	ATEWAY	DRIVE;	OPEL:	IKA,	AL.	36801	
		- and plea	MS. I	AURYN	AKENS	LAUDER	DALE;	ATTO	RNEY	-AT-LA	W
(6)	At arraignme	n( and pres	2304	- A G	ATEWAY	DRIVE;	OPEL	IKA,	AL.	36801	
, ,	At trial		MS. I	LAURYN	AKENS	LAUDER	DALE;	ATTO	RNEY	-AT-LA	<u>w</u>
(c)	Althai		2304	- A G	SATEWAY	DRIVE;	OPEL	IKA,	AL.	36801	
<i>1 -i</i> \	At sentencin	0	MS 🏃 I	LAURYN	N AKENS	LAUDER	DALE;	ATTO	ORNEY	-AT-L	A W
(5)	Alsentenom		2304	- A C	GATEWAY	DRIVE;	OPEL	IKA,	AL.	36801	
(€)	On appeal	N/A -	NO API	PEAL	,						
(5)											
(i)	In any post-o	onviction ;	proceedi	ng <u>N/</u>	A THIS	IS PET	TIONE	R'S	FIRS	r Post	
(.)	CONVICT	ON PETI	TION	WHICH	BEING	FILED I	PRO-SE	2	<del></del>		
							N	'A NO	NE A	S YET	
		rom advars	e rulina	in a pos	t-convicti	on proceed	ing —				
(3)	On appeal f	rom advers	se ruling	in a pos	t-convicti	on proceed	ing				
(3)	On appeal f	rom advers	se ruling	in a pos	t-convicti	on proceed	sing				
	ara vou senie	nced on m	nore than	n one c							
Wi	ere you sente the same coul	nced on m	nore than e same ti	n one c							
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# PETITIONER'S VERIFICATION U DER OATH SUBJECT TO PENALTY FOR PERJURY

I swear (or affirm) under penalty of perjury that the foregoing is true and correct. SWORN TO AND SUBSCRIBED before me this the OR * ATTORNEY'S VERIFICATION UNDER OATH SUBJECT TO PENALTY FOR PERJURY I Swear (or affirm) under penalty of perjury that, upon information and belief, the foregoing is true and correct. Executed on . Signature of Petitioner's Attorney SWORN TO AND SUBSCRIBED before me this the _____ day of _ Notary Public Name and address of attorney representing petitioner in this proceeding (if any) ROBERT WAYNE CLEMENTS, PRO-SE ECF * #145599 * DORM - 9/A-200 - WALLACE DRIVE CLIO, ALABAMA 36017-2615

^{*} If petitioner is represented by counsel, Rule 32.6(a) permits either petitioner or counsel to verify the petition.

IN THE CIRCUIT COURT FOR LEE COUNTY, ALABAMA

ROBERT WAYNE CLEMENTS.

PETITIONER.

* IN OFFICE CORINNET HURST CIRCUIT CLERK

* CASE NUMBER:

ASSIGNED BY CLERK

STATE OF ALABAMA,

* IN RE: CASE NO.'S: CC-03-323& 326

32

PETITION FOR RELIEF OF CONVICTION AND SENTENCE PURSUANT TO: ALABAMA RULES OF CRIMINAL PROCEDURE RULE #32, ET. SEQ..

Comes now your Petitioner, Pro-Se, with inmate paralegal assistance in the above named and styled case and action and hereby moves this Honorable Court to entertain and grant this instant Petition for the causes following, to wit;

I.

#### JURISDICTION

your Petitioner hereby files this instant Petition pursuant to: Alabama Rules of Criminal Procedure, Rule # 32, et. seq., and hereby invokes said Rule as jurisdiction for this Honorable Court to entertain and grant this instant Petitioner.

II.

### STATEMENT OF THE CASE

(1).

On or about, 01-11-03, your Petitioner was arrested for the following alleged offenses:

- 1). Attempted Burglary in the First Degree, and;
- 2). Possession of Short Barrel Shotgun, and;
- Possession of Burglary Tools, and;
- 4). Conspiracy to Commit Robbery.

(4).

Your Petitioner prays that this Court make a transcript of all proceedings concerning this instant case at bar if this Court does not grant your Petitioner's Rule # 32 Petition so that there shall be an accurate for eventual appeal.

(5).

Your Petitioner prays that your Petitioner will be transported to all phases and hearings concerning your Petitioner's Rule # 32 Petition.

(6).

Your Petitioner finally prays for any further relief that this the Court deems just, proper, and, necessary.

Executed this the 8 day of 2004.

Respectfully Submitted,

ROBERT W. CLEMENTS, PETITIONER, PRO-SE

### IN THE CIRCUIT COURT FOR LEE COUNTY, ALABAMA

ROBERT WAYNE CLEMENTS.

PETITIONER,

CASE NUMBER:

ASSIGNED BY CLERK

-VS-

STATE OF ALABAMA,

IN RE: CASE NO.'S: CC-03-323 &

RESPONDENT.

LEE COUNTY CIRCUIT COURT

### PETITIONER'S BRIEF AND ARGUMENT IN SUPPORT OF PETITIONER'S A.R.Cr.P. RULE # 32 PETITION

Comes now, your Petitioner, Pro-se, herein and above named in the above styled and numbered cause, with inmate para-legal assistance and hereby presents the following issues and arguments in support of your Petitioner's A.R.Cr.P., Rule # 32 Post-Conviction Petition:

### ISSUE # 1:

THE CONSTITUTION OF THE UNITED STATES OR OF THE STATE OF ALABAMA REQUIRES A NEW TRIAL, A NEW SE-NTENCE PROCEEDING, OR OTHER RELIEF PRAYED FOR IN THIS INSTANT POST-CONVICTION PETITION.

#### ARGUMENT:

Your Petitioner shows to this Honorable Court that your Petitioner's Conviction and Sentence is in direct violation of the Fifth (5th) Amendment to the United States Constitution, in the Your Petitioner has a liberty protected interst to due process of law as provided by the sixth (6th) Amendment to the United States Constitution, and, the Alabama Constitution, 1901, Art. I, §(6), and further pursuant to the fourteenth (14th) Amendment to the United States Constitution _made obligatory upon the states pursuant to the fifth (5th) Amendment to the United States Constitution.

and in support of this instant "Issue" your Petitioner hereby PRESENTS THE FOLLOWING, TO WIT:

### ISSUE # 2:

PETITIONER'S CONVICTION OBTAINED BY A PLEA OF GUILTY WHICH WAS UNLAWFULLY INDUCED OR NOT MADE VOLUNTARILY WITH THE UNDERSTANDING OF THE NAT-URE OF THE CHARGE AND THE CONSEQUENCES OF THE OF THE PLEA.

#### ARGUMENT:

Your Petitioner shows to this Court that he was originally indicted for the following offenses:

- 1). Possession of a Short Barrel Shotgun, and;
- 2). Attempted Burglary in the First Degree, and;
- 3). Possession of Burglary Tools, and;
- 4). Conspiracy to Commit Robbery.

Your Petitioner shows to this Court that he was not advised by the Court of exactly what the minimum and maximum range of punishments for the above refferenced "offenses", hence; your Petitioner did not have, nor, was your Petitioner properly notified as to what the minimum and maximum ranges of sentencing that your Petitioner would expect to receive from said offenses.

If the "defendant" had been properly advised by the Court of the minimum and maximum ranges of **all** cases your Petitioner would not have plead guilty to Case No. CC-03-323 and CC-03-325.

Your 4Petitioner shows to this Court that your Petitioner's plea of guilt was not made knowingly and intelligently, hence; Petitioner's plea of guilt could not bee accepted by the Court.

Your Fetitioner shows to this Court that he was ill-advised by his trial counsel that he had to plead guilty to (23) years because the State had forensic evidence against your petitioner and if your Petitioner was to go to trial your Petitioner would receive a much harsher sentence.

Your Petitioner, pursuant to his attorney pled guilty because his attorney did not want to go to trial and because said attorney stated that the State had forensic evidence against against your Petitioner, which; your Petitioner recently found out is not true.

Your Petitioner shows to this Court that .e was not informed by his attorney of the true evidence against your Petitioner and, thus; your Petitioner could not knowingly and intelligently "waive" his due process right to trial.

Your Petitioner would not have pled guilty if his counsel had properly advised your Petitioner that the State did not have any forensic evidence against your Petitioner.

Therefore, Petitioner did not have all the facts of his case and therefore Petitioner could not waive his constitutional right, pursuant to: the (6th) Amendment to the United States Constitution, for due process and further pursuant to: Alabama Constitution, 1901, §Art. I, §(6), and further pursuant to: the (14th) Amendment to the United States Constitution, for equal protection made obligatory upon the States pursuant to: the (5th) Amendment to the United States Constitution. See Teel-v-Burton, 904 F. Supp. 1294, and, further pursuant to: Lynch-v-Baxley, 386 F. Supp. 378.

### ISSUE # 3:

CONVICTION OBTAINED BY USE OF A COERCED CONF-ESSION FROM THE DEFENDANT AND THE ALLEGED CO-DEFENDANT.

#### ARGUMENT

Your Petitioner shows to this Court that on the evenof your Petitioner's arrest in this instant case at bar your was highly intoxicated to the point of being twice over the legal limit of intoxication.

Because of your Petitioner's intoxication your Petitioner was in no way able to consent to waiver of any constitional rights or interrogation.

Your Petitioner shows to this Court that his degree of intoxication was to the point that your Petitioner could not form any type of consent to knowingly waive his constitutional rights to interrogation by the police. See <u>Code of Alabama</u>, 1975, §13A-3-2, et. seq., and <u>Lovette-v-State</u>, 491 So. 2d. 1034,1035.

Your Petitioner further shows to this Court that your Petitioner's alleged co-defendant in this instant case at bar was apparently "coerced" into making a statement against your Petitioner as said co-defendant made five (5) different statements against your Petitioner and once the police were able to get the statement from the alleged co-defendant that best suited the police, said police then used said "coerced statement" to charge your Petitioner with a charge for "conspiracy to commit robbery".

Your Petitioner shows to this Court that his alleged statement to the police was "coerced" and therefore would have been inadmissable at trial not to be used against your Pettioner. See <u>Williams-v-State</u>, 75 So. 2d. 753, rehearing denied Ex Parte <u>Williams</u>, 795 So. 2d. 785 rehearing denied, certioarari denied 122 S. Ct. 226, 534 U.S. 900, 151 L. Ed. 2d. 162.

Your Petitioner further shows to this Honorable Court that the alleged co-defendant statements were also coerced alot of inducements were offered to said co-defendant for his statements against your Petitioner, hence; said five (5) different statements made against your Petitioner by the alleged co-defendant are null and void. See <a href="Craig-v-State">Craig-v-State</a>, 719So. 2d. 274 rehearing denied and certiorari denied, denial of Post-Conviction Relief affirmed, 819 So. 2d. 1001.

Hence, Petitioner was coerced into making a statement as the police threatened your Petitioner that there was forensic evidence against your Petitioner when there was none. Further threatened your Petitioner that there was a statement from the alleged co-defendant that would of proved to be involuntary and inadmissable against your Petitioner.

#### ISSUE # 4:

ARREST AND CONVICTION OBTAINED BY USE OF EVIDENCE GAINED PURSUANT TO AN UNCONSTITUTIONAL SEARCH AND SEIZURE.

#### ARGUMENT:

Your Petitioner shows to this Court that he went to the alleged victim's house to pick up a "mantle" that the alleged victim's daughter said I could have.

Your Petitioner shows to this Court that "Lee Williamson" gave your Petitioner a ride to the alleged victim's house to pickup said mantle.

While your Petitioner was trying to notify the alleged victim that your Petitioner was there to pickup said "Mantle" "Lee Williamson" pulled out of the alleged victim's driveway, leaving your Petitioner without a ride home.

The police caught up with "Lee Williamson" and the police then came back to the alleged victim's house and without an arrest warrant or search warrant searched your Petitioner and at that time placed you Petitioner under arrest.

Your Petitioner further shows to this Court that at a later date the police obtained a search warrant without probable cause to search your Petitioner's place of residence.

Your Petitioner shows to this Court that he was legally at the alleged victim's residence having gained permission to go there and having done considerable work for the alleged and her daughter.

Petitioner shows to this Court that he was illegally and unconstitutionally searched at the alleged victim's residence and further shows to this Court that where a search is execcuted without warrant, burden falls within exception to warrant requirement.

Your Petitioner further shows to this Court that ther police did not meet these requirements in your Petitioner's case at bar, thus; violating your Petitioner's (4th) Amendment Right to the United States Constitution against unreas-

onable search and seizures. Your Petitioner further shows to this Court that Officers did not have probable cause to arrest your Petitioner, to search his person, or to seize items from from his person.

There was no evidence that the Petitioner was involved in any illegal action when the police approached your Petitioner.

Hence, your Petitioner's <u>U.S.C.A.</u>, #(4) Right to unreasonable searches and seizures have been violated, SEE <u>Gaskin-v-State</u>, 565 So. 2d. 675; See also; <u>White-v-State</u>, 550 So.
2d. 1074; writ denied 550 So. 2d. 1081, certiorari granted
110 S. Ct. 834; 493 U.S. 1042; 107 L. Ed. 2d. 301; on remand
571 So. 2d. 400.

Your Petitioner further shows to this Court that Probable Cause for warrantless search cannot be founded upon mere suspicion as in your Petitioner's instant case at bar, hence; U.S.C.A., #(4) Right against unreasonable search and seizure has again been violated by the Respondents and/or their agents, See Ex Parte Tucker, 667 So. 2d. 1339, rehearing denied on remand, Tucker-v-State, 667 So. 2d. 1353, certiorari denied Alabama-v-Tucker, 116 S. Ct. 382; 516 U.S. 944, 133 L. Ed. 2d. 305.

Therefore, any evidence, (physical or constructive) that was taken from your Petitioner is "tainted fruit" and has to be suppressed and never used against your Petitioner now or in the future.

## ISSUE # 5:

CONVICTION OBTAINED BY USE OF EVIDENCE OBTAIN-ED PURSUANT TO AN UNLAWFUL ARREST.

#### ARGUMENT:

Your Petitioner shows to this Court that he was illegally arrested and that an extraction of a statement allegedly gained

arrest" till time of alleged confession. See Taylor-v-Alabama, 102 S. Ct. 2664, 457 U.S. 687, 73 L. Ed. 2d. 314, hence; your petitioner's alleged confession was gained illegally and unconstitutionally by a violation of the (4th) Amendment to the United States Constitution, and a further violation of the (5th) Amendment to the United States Constitution, privilege against self-incrimination.

### ISSUE # 7:

CONVICTION OBTAINED BY THE UNCONSTITUTIONAL FAILURE OF THE PROSECUTION TO DISCLOSE TO THE DEFENDANT EVIDENCE FAVORABLE TO THE DEFENDANT.

### **ARGUMENT:**

Your Petitioner shows to this Court that your Petitioner is entitled to any and all "exculpatory evidence" that the state/prosecution/respondents may have in their possession.

Your Petitioner shows to this Court that your Petitioner's attorney, pursuant to: Alabama Rules of Criminal Procedure, Rule # 16, et. seq., is suppose to file a "Motion for Discovery" to the Respondents and that said Respondents have a duty to provide all evidence to your Petitioner, exculpatory or otherwise. See Brady-v-Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.ed. 2d. 215.

Furthermore, in "BRADY", "the Court held due process was violated where, after your Petitioner's request, the state failed to reveal evidence that was material to your petitioner's guilt or punishment".

The Court in "Brady" reasoned that if the state were allowed to withhold potentially exculpatory evidence which had been demanded by your Petitioner through "Discovery" the state would be able to shape the very nature of the trial, as in your Petitioner's case at bar, where a trial is already weighed against your Petitioner.

Your Petitioner further shows to this Court that such orche-

stration of a criminal trial does not comport with the acceptable standards of justice.

Also, "Brady" requires the state to disclose any information it has which is favorable to your Petitioner, again; which the prosecution failed to do for your Petitioner.

Requiring the disclosure of the evidence, or lack of evidence as in your Petitioner's case at bar, in the state's possession which is material to the preparation of your Petitioner's case is an extension of due process and equal protection, hence; the Respondents and your Petitioner's attorney violated your Petitioner's Sixth (6th) Amendment Right to the United States Constitution, Right of Due Procees, and, fourteenth (14th) Amendment Right to the United States Constitution, Right to Equal Protection made obligatory upon the States pursuant to: the Fifth (5th) Amendment to the United States Constitution. See United States-v-Aqurs, 427 U.S. 97, 96 S.Ct. 2392, 4 L.Ed. 2d. 342, and, Miller-v-Pate, 386 U.S. 1, 87 S.Ct. 785, 17 L.Ed. 2d. 690, see also; Moore-v-Illinois, 408 U.S. 786, 92 S.Ct. 2562, 33 L.Ed. 2d. 706.

Finally, pursuant to: Alabama Rules of Criminal Procedure, Rule # 16.1(f): "Nothing in this Rule [Rule 16.1, et. seq.], shall be construed to limit the discovery of exculpatory evidence to which the Petitioner is entitled under constitutional provisions or other provisions of law".

Your Petitioner shows to this Court that the State failed to shows that there was ¶no forensic or physical evidence¶ against your Petitioner and instead chose to mislead your Petitioner that there was forensic and physical evidence against your Petitioner to get your Petitioner to plead guilty.

#### ISSUE # 8:

PETITIONER WAS CONVICTED PURSUANT TO INEFFE-CTIVE ASSISTANCE OF COUNSEL.

#### ARGUMENT:

Your Petitioner shows to this Court that pursuant to: the Fifth (5th); Sixth (6th); and, the Fourteenth (14th) Amendments to the United States Constitution, Petitioner shall have

effective assistance of counsel, whether; counsel is appointed obtained, the level of representation shall be the same, but, in your Petitioner's instant case at bar your Petitioner's was so ineffective that it prejudiced your Petitioner from receiving "effective assistance of counsel.

Your Petitioner shows to this Court that your Petitioner's Attorney owed your Petitioner a "duty of loyalty, a duty to advocate your Petitioner's defense, a duty to consult with your Petitioner on important decisions, a duty to keep your Petitioner informed of important develops in the course of your Petitioner's prosecution, and a duty to bear such skill and knowledge as which will render the trial a reliable testing procees". See <a href="Strickland-v-Washington">Strickland-v-Washington</a>, 466 U.S. 668, 80 L.Ed. 674, 104 S.Ct. 2052, and, <a href="United States-v-Cronic">United States-v-Cronic</a>, 466 U.S. 648, 80 L.Ed. 2d. 657, 104 S.Ct. 2039, said counsel did not provide any of the foregoing in your Petitioner's instant case at bar.

The adversarial process protected by the Sixth (6th) Amendment requires that the accussed have counsel acting in the role of an advocate, and the right to the effective assistance of counsel is thus the right of the accussed to require the prosecution's case to survive the crucible of meaningful adversarial testing. See MwMann-v-Richardson, 397 U.S. 759, 771 n14 25 L.Ed. 2d. 763, 90 S.Ct. 1441.

The Sixth (6th) Amendment requires not merely the provision of counsel to the accused in a criminal prosecution, but, assistance which is to be his defense, and thus, the core core purpose of the counsel guaranty is to assure counsel assistance at trial when the accused is confronted with the intricacies of the law, and if no actual assistance for the accused's defense is provided, as in your Petitioner's instant case, then the constitutional guaranty has been violated, as in your Petitioner's instant case at bar. See <u>United States-V-Cronic</u>, 466 U.S. 648, 80 L.Ed. 2d. 657-659, 104 S.Ct. 2041.

Your Petitioner shows to this Court that the Sixth Amendment to the United States Constitution provides, in pertinent

part, the following, to wit;

"In all criminal prosecutions, the accused shall enjoy the right...to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

Hence, your Petitioner did not have the effective assistance of counsel as guaranteed by the Sixth (6th) Amendment to the United States Constitution as none of the foregoing was provided for your Petitioner. See <u>United States-v-Ash</u>, 413 U.S. 300, 30, 37 L.Ed. 2d. 619, 93 S.Ct. 2568.

Your Petitioner shows to this Court that your Petitioner's attorney did provide the following:

- a). Contact witnesses who wrote to your Petitioner's attorney to testify in your Petitioner's behalf, and;
- b). Did no investigatory work in your Petitioner's, case, and;
- c). File Motion to Recuse the Judge[s], both in District Court and the Circuit Court because said Judge[s] were prejudicial against your Petitioner, and;
- d). If a "motion for Discovery"was filed your Petitioner's never did said results from said Motion for Discovery, nor, did the attorney go over any results of said "Discovery" with your Petitioner before trial, and;
- e). Petitioner's Attorney did file any pre-trial "motions" prior to trial and/or at your Petitioner's Plea in example, but not limited to:
  - 1). Motion to Suppress Petitioner's illegally gained statement, and;
  - 2). Motion to Quash or Demurr Petitioner's indictment as it is fatal and does not track the language of the statue[s], and;
- 3). Acted in Concert with the Prosecution to gain an illegal and unconstitutional conviction by providing false information to your Petitioner that the Prosecution had forensic evidence against your Petitioner, when said Prosecution did not have said

- forensic vidence in their possessic but, the proprosecution lead your Petitioner into believing that they did have said evidence and your Petitioner's counsel worked in concert with said Prosecution to illicit a guilty plea from your Petitioner, and;
- f). Did not investigate the alleged co-defendant's (5) different statement against your Petitioner, or, file a "Motion for Suppression" against said statements from the alleged co-defendant's statements, and;
- g). Did not investigate to see if the prosecution was in possession of any exculpatory statements, documents, or, evidence that would establish your Petitioner's innocence, and;
- h). Failed to discuss any strategy concerning your Petitioner's case, and;
- i). Contact your Petitioner to discuss and prepare for his defense for a trial, and;
- j). Did not file a "Motion to Suppress Evidence" that was illegally and unconstitutionally gained from Petitioner pursuant to a "warrantless" arrest, and;
- k). Informed his attorney to file a "Motion to Change Venue" as the alleged crime took place in a small town who knew the alleged victim, and;
- Ask his attorney to file a "Motion to Withdraw as my attorney, but said attorney failed to do so, and;
- m). Asked said attorney to file several other "Motions" but, all said attorney's response to your Petitioner was: "why, you're going to lose anyway", and;
- n). Waited until my case was over to fight my public intoxication arrest which was gained at the same time as this instant case at bar and by said attorney's failure to handle said case a bench warrant was issued for my arrest, and;
- o). Failed to advise me of my right to appeal, and;

p). Petitioner did authorize counsel to waive arraigment.

Hence, your Petitioner shows to this Court that Petitioner's Attorney was ineffective and that his conviction in this instant case at bar is due to be vacated. See <a href="Terry-v-State">Terry-v-State</a>, 601
So. 2d. 161, certiorari denied, <a href="Weaver-v-State">Weaver-v-State</a>, 401 So. 2d.

344; <a href="Gore-v-State">Gore-v-State</a>, 227 So. 2d. 432, 45 Ala. App. 146, certiorari denied 227 So. 2d. 435, 284 Ala. 729, certiorari denied 90 S.Ct. 1002, 397 U.S. 966, 25 L.Ed. 2d. 258, <a href="Thomas-v-Harr-elson">Thomas-v-Harr-elson</a>, 42 F. 2d. 1530, and; <a href="Jones-v-White">Jones-v-White</a>, 992 F.2d. 1548, rehearing denied <a href="Garrette-v-Jones">Garrette-v-Jones</a>, 3 F.3d. 444, <a href="Mardis-v-Jones">Mardis-v-Jones</a>, 3 F.3d. 444, <a href="Certiorari denied">Certiorari denied</a> 114 S.Ct. 448, 126 L.Ed. 2d. 691.

### ISSUE # 9:

THE COURT WAS WITHOUT JURISDICTION TO RENDER THE JUDGEMENT OR TO IMPOSE THE SENTENCE.

### ARGUMENT:

Your Petitioner shows to this Court that your Petitioner's Indictment is "fatal". In said indictment it states:

"Robert Wayne Clements, alias Robert Clements, whose true is otherwise unknown to the Grand Jury, did agree with Michael Williams, alias, to commit the crime of Robbery First Degree (Section 13A-8-41 of the Code of Alabama) with the intent that conduct constituting said offense be performed and that Robert Wayne Clements did go to the residence of Julia M. Tatum, while said Robert Wayne Clements was armed with a shotgun, and in possession of work gloves, ski mask, and/or cord in furtherance of said crime, in violation of Section 13A-4-3 of the Code of Alabama".

Your Petitioner shows to this Court that said "Indictment" is fatal as in nowhere in the Indictment does it so state: "knowingly" in said Indictment.

The Indictment is **defective...**If it fails to charge the that the defendant "knowingly" committed the act for which he is criminally indicted.

The fact that said indictment refers to its statutory source cannot save the indictment as in your Petitioner's in-

to allege this element. Your Petitioner further argues that the failure to allege this essential element renders the indictment void and unable to support a judgement of conviction as in your Petitioner's instant case at bar.

Your Petitioner shows to this Court that he pled guilty and that by pleading guilty your Petitioner would waive any irregularities in an indictment by appearing and pleading in a trial court, because his plea to the merits is held as an admission that the indictment is valid.

However, "[t]he only exception to this exception to this is when an indictment fails to include an essential element of the offense which leaves the accused unaware of the nature and cause of the charge against him, as in your Petitioner's instant case at bar". See <u>Canada-v-State</u>, 421 So. 2d. 145.

"This Court is **bound** to take notice of defects in an indictment which render it void even in the absence of an objection". See <u>Felder-v-State</u>, 512 So. 2d. 817, 818, and; <u>Barbee-v-State</u>, 417 So. 2d. 612, see also; <u>Alabama Rules of Criminal Procedure Temporary</u>), <u>Rule # 16.2 (a) (d) which provide that</u> the failure of the charge to state an offense may be raised at any time.

Hence, your Petitioner shows to this Court that your Petitioner's instant case at bar fits the exception to the preservation rule because the omission of the allegation of "know-ledge in your Petitioner's indictment in this instant case case at bar is the type of defect that renders the indictment void. See Walker-v-State, 56 So. 2d. 672.

# ISSUE (b):

Your Petitioner shows to this Court that on or about 08-09-03, your Petitioner through his attorney notified the court of his intent to plead guilty.

Your Petitioner further shows to this Court that after expiration of only (2) days the trial court accepted your Petitioner's guilty plea for "Conspiracy to Commit Robbery and Possession of a Short Barreled Shotgun".

your Petitioner shows to this Court that the Court was without jurisdiction to accept your Petitioner's Guilty Plea as said Court did not wait the prescribed (3) days to take your Petitioner's guilty plea from the date that your Petititioner first notified the Court of his intent on pleading guilty.

Petitioner shows to this Court that he notified the Court on 08-09-03 of his intent to plead guilty and this Court accepted Petitioner's guilty plea on 08-11-03.

Petitioner shows to this Court that your Petitioner's Judgement is void because the trial court failed to observe the requirements of Code of Alabama, 1975, §15-15-22 since your Petitioner's Plea was entered within (3) days after the notice to the court of his intention to plead guilty. See State-v-Baker, 268 Ala. 410, 108 So. 2d. 361.

Failure to comply with mandatory requirements of <a href="Code">Code</a>
of Alabama, 1975, §15-15-22 void any judgement of §15-15-20, et. seq..

Hence, your Petitioner's judgement is void in these instant cases at bar. SeeWesley-v-State, 448 So. 2d. 468, and; and Barbee-v-State, 417 So. 2d. 611, 612 (quoting State-v-John, 142 Ala. 61, 28 So. 755.

## ISSUE (c):

Your Petitioner shows to this Court that your Petitioner was allegedly arrested and indicted for the alleged offense of "Conspiracy to Commit Robbery". But, your Petitioner shows this Court that his indictment is fatal and void as it does properly charge your Petitioner with "Conspiracy to Commit Robbery in the First Degree", but, instead charges your Petitioner with (2) separate offenses, "Robbery in the First Degree and does not mention anything about "Conspiracy".

Indictment so states in pertinent part, the following: "The Grand Jury of said County charge that before the finding of this indictment CC-03-323 Robert Wayne Cle-

ments, alias Robert Clements, whose true christian name is otherwise unknown to the grand jury, did agree with Michael Lee Williams, alias, to commit the crime of "Robbery in the First Degree" (Section 13A-8-1 of the Code of Alabama) with the intent constituting said offense be performed and that Robert Wayne Clements did go to the residence of Julia M. Tatum, while said Robert Wayne Clements was armed with a shotgun, and was in possession of work gloves, ski mask and/or cord in furtherance of said crime, in violation of Section §13A-4-3 of the Code of Alabama."

Your Petitioner shows to this Court that nowhere does it state that your Petitioner is charged with "Conspiracy to Comitt Robbery, but, instead charges your Petitioner with "Robbery in the First Degree".

your Petitioner shows to this Court that said indictment was defective and failed to adequately notify and charge your Petitioner with the alleged offense of "Conspiracy to Commit Robbery in the First Degree, and instead charges your Petitiwith Robbery in the First Degree".

Your Petitioner shows to this Court that when an indictment fails to include essential element of offense, as in "Conspiracy" as in your Petitioner's instant case at bar, this
left your Petitioner unaware of the charge against him. See
Alabama Rules of Criminal Procedure, (Temporary), Rule # 16.2(a)
(d).

Your Petitioner further shows to this Court that the indictment under which your Petitioner was found guilty by this Court does not aver all the elements of "Conspiracy" and, for that reason, does not charge a crime that would have conferred jurisdiction upon the trial court.

Your Petitioner further shows to this Honorable Couryt the fact that the indictment refers to its statutory source cannot save it from being fatally deficient as in your Petitioner's instant case at bar.

The rule is that the indictment must contain all the essentials to constitute the offense, explicitly charged, and that they must not be left to inference, as in your Petiti-ioner's instant case at bar. See <a href="State-v-Seay">State-v-Seay</a>, 3 Stew, 123, 131; <a href="Pate-v-State">Pate-v-State</a>, 45 Ala. App. 164, 166 227 So. 2d. 583, and; see also; <a href="Woodham-v-State">Woodham-v-State</a>, 28 Ala. App. 62, 178 So. 464.

### ISSUE # 10:

NEWLY DISCOVERED MATERIAL FACTS EXIST WHICH REQUIRE THAT THE CONVICTION OR SENTENCE BE VACATED BY THE COURT.

# ARGUMENT:

Your Petitioner shows to this Court that his attorney did not go over any of the materials produced on Discovery.

It was not until 2004 that your Appellant was finally able to get most of the materials that were produced on discovery. Petitioner also shows to this Court that your Petitioner does not have all of the documents and evidence that the State and your Petitioner's Attorney has in their possession.

In finally being able to read and research your Petitioner's case your Petitioner has come to learn for the first time of all the discrepancies concerning your Petitioner's case, and, if your Petitioner had known of all the errors committed by Respondents and/or their agents your Petitioner would never have pled guilty.

There are several things that your Petitioner has noted from his "discovery" that were in error, to include but not limited to the following:

- 1). Ineffective Assistance of Counsel, and;
- 2). The Court was without jurisdiction to find me guilty or to sentence me, and;
- 3). That my statements could have been easily suppressed, and:
- 4). That the alleged co-defendant committed perjury more than (5) times, and;
- 5). That there was no evidence, forensic or otherwise against me, etc..

Your Petitioner shows to this Court that the "newly discovered evidence" are not cumulative to one another See <u>Harris-v-State</u>, 778 So. 2d. 256 and also, <u>A.R.Cr.P.</u>, Rule #32.1 (e).

Your Petitioner further shows to this Court that the "newly discovered evidence" was **not** known before your Petitioner's trial or guilty plea. See <u>Jones-v-State</u>, 753 So. 2d. 1174.

## ISSUE # 11:

YOUR PETITIONER FAILED TO APPEAL WITHIN THE PRESCRIBED TIME AND THAT FAILURE WAS WITHOUT FAULT UPON YOUR PETITIONER'S PART.

### ARGUMENT:

Your Petitioner shows to this Court that after your Petitioner was convicted by this Court and sentenced by this Court that this Court and your Petitioner's Trial Attorney failed to advise your Petitioner that your Petitioner had a right to appeal his conviction and sentence.

Your Petitioner shows to this Court that the record is void of any statement by this Court that this Court advised your Petitioner of his right to appeal his conviction and sentence.

Furthermore, your Petitioner shows to this Court that there is nothing to support trial counsel had advised your Petitioner of his right to appeal.

Your Petitioner shows to this Court that pursuant to: due process clause of the (6th) Amendment to the United States Constitution, and, Alabama Constitutin, 1901, Art. I, §(6), your Petitioner further shows to this Court that pursuant to: the (14th) Amendment to the United States Constitution your your Petitioner further has a due process and equal protection right made obligatory upon the States pursuant to: the (5th) Amendment to the United States Constitution, that your has a right to be advised of his right to appeal, this was not done in your Petitioner's case at bar.

Your Petitioner further shows to this Court that pursuant to: Alabama Rules of Criminal Procedure, Rule #26.9 the Court shall inform the "defendant" of his right to appeal. SEE Waddle--v-State, 748 So. 2d. 368, 369, and; Burton-v-State, 728 So. 2d. 1142. Your Petitioner further shows to this Court that nethe Judge or your Petitioner's attorney advised your Petitioner your Petitioner of his right to appeal your Petitioner's conviction and sentence.

# ISSUE # 12:

TRIAL JUDGE WAS PREJUDICED AGAINST YOUR PET-ITIONER AND SHOULD HAVE RECUSED HIMSELF AND/ OR TRIAL COUNSEL SHOULD HAVE FILED MOTION TO RECUSE SAID TRIAL AND DISTRICT JUDGES.

# ARGUMENT:

Your Petitioner shows to this Court that when your Petitioner was initially arrested for the herein referenced offenses your Petitioner's bond was originally set at a figure that your Petitioner could make bail on.

Your Petitioner shows to this Court that at a later date the Lee County District Court, The Honorable Russell K. Bush raised said bail to almost (\$2,000,000).

Your Petitioner further shows to this Court that your Petitioner's Trial Circuit Court Judge acted in concert with Judge Bush to maintain and unlawful and unconstitutional bail of (\$2,000,000).

Your Petitioner further shows to this Court that said oppressive bail violated the (8th) Amendment to the <u>United</u> States <u>Constitution</u>.

Your Petitioner shows to this Court that bail in the amount of almost (\$2,000,000) is excessive. Petitioner shows in Ex Parte Thomas, 815 So. 2d. "Thomas" was charged with (3) murders and his bail was (\$1,000,000) and the decision in "Thomas" stated that said (\$1,000,000) bail was "excessive".

Furthermore, your Petitioner's (\$2,000,000) bail exceeded the prescribed recommended bail schedule in which your Petitioner's initial bail was properly set pursuant to bail schedule and Alabama Rules of Criminal Procedure, Rule #7.2.

And, for the District Court Judge to raise your Petitioner's bail to (\$2,000,000) and for your Petitioner's trial to maintain said excessive bail violated your Petitioner's constitutional rights prescribed in <a href="Ex Parte Thomas">Ex Parte Thomas</a>, 815 So. 2d. 592.

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Your Petitioner shows to this Court that the District Court Judge is good friends with the alleged victim's family and because of said friendship said District Court Judge improperly raised your Petitioner's bail to almost (\$2,000,000) from your Petitioner's initial bail of (\$5,000) without a and did so arbitrarily and capriciously.

Your Petitioner's bail does not conform to the bail standard as set forth in Alabama Rules of Criminal Procedure, Rule #7.2 (b), which your Petitioner's bail should have not been more than (\$3,000 to 30,000).

Your Petitioner further shows to this Court that said District Court failed to adhere to Alabama Rules of Criminal Procedure, Rule # 7.2, et. seq., and hold a hearing to properly access your Petitioner's bail.

Your Petitioner further shows to this Court that the Citrouit Court acted in accordance to stay your Petitioner's bail at almost (\$2,000,000) withou any type of a hearing, which; violated not only your Petitioner's due process rights pursuant to the (6th) Amendment to the United States Constitution, and, Alabama Constitution, 1901, Art. I, §(6), and further pursuant to the (8th) Amendment to the United States Constitution, against unreasonable bail as in your Petitioner's instant case at bar.

your Petitioner shows to this Court that said Judge was not impartial to your Petitioner's case throughout your Petitioner's case and that said Judge's impartiality to your Petitioner would easily have been questioned if another person knew all of the circumstances in your instant case at bar and that said impartiality was a complete violation of Canon of Judicial Ethics, Canon #(3), subds. C, C(1), See also; Ex Parte Duncan, 638 So. 2d. 1332.

Your Petitioner further shows to this Court that said should have been disqualified as said Judge(s) adverse action against your Petitioner afected your Petitioner's individual individual rights, and said Judge(s) had a probable and natural through their actions against your Petitioner to create bias against your Petitioner. See Williams-v-Faucett, 579 So. 2d. 572. Hence, said Judge(s) should have recused themselves.

## CONCLUSION AND PRAYER FOR RELIEF

WHEREFORE PREMISES SHOWN: YOUR PETITIONER HEREBY PRAYS FOR THE FOLLOWING:

(1).

Your Petitioner prays that this Honorable Court hereby grants this instant "Rule # 32 Petition" and immediately vacate your Petitioner's Conviction and Sentence in this instant case at bar.

(2).

In the alternative, your Petitioner prays for an "Evidentiary Hearing" if this Court does not immediately grants your Petitioner's Rule #32 Petition.

(3).

Petitioner also prays that this Court appoint Counsel to represent your Petitioner on this instant case at bar.

(4).

Your Petitioner prays that this Court make a transcript of all proceedings concerning this instant case at bar if this Court does not Court does not grant your Petitioner's Rule #32 Petition so that there shall be an accurate for eventual appeal.

(5).

Your Petitioner prays that your Petitioner will be transported to all phases and hearings concerning your Petitioner's Rule #32 Petition.

(6).

Your Petitioner finally prays for any further relief that this Court deems just, proper, and, necessary. Executed this the  $\frac{8}{2}$  day of  $\frac{1}{2}$  , 2004.

RESPECTFULLY SUBMITTED,

ROBERT W. CLEMENTS, PETITIONER, PRO-SE

# <u>CERTIFICATE OF SERVICE</u>

I hereby certify that I have served upon the Respondent a copy of the foregoing by placing same in the United States Mail Box located at Easterling Correctional Facility, postage prepaid and addressed correctly.

Executed this the day of June, 2004.

ROBERT CLEMENTS, PETITIONER, PRO-SE

# ADDRESS OF PETITIONER:

ROBERT CLEMENTS, PRO-SE ECF * #145598 * DORM - 9/A-24 200 - WALLACE DRIVE CLIO, ALABAMA 36017-2615

# -NOTARY STATEMENT-

STATE OF ALABAMA ]
COUNTY OF BARBOUR ]

SWORN TO AND SUBSCRIBED BEFORE ME THIS THE

__DAY OF

NOTARY PUBLIC

my commission expires March 19, 2007

MY COMMISSION EXPIRES